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10/511,588	10/04/2004	Yoshiharu Sato	10921.252USWO	9267
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EXAMINER				
RAMDHANE, BOBBY				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/511,588

Applicant(s)

SATO, YOSHIHARU

Examiner

BOBBY RAMDHANIE

Art Unit

1797

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 April 2009.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 4-18 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1, 4-13, 17 and 18 is/are rejected.
7) ☒ Claim(s) 14-16 is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-8508)
Paper No(s)/Mail Date _____
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 04/24/2009 have been fully considered but they are not persuasive. The following reasons are why: Applicants state that the analytical tool cartridge of claims 1, 13 and 17 each requires, among other features, a plurality of analytical tools stored in a storage space in a stacked state, a retrieval mechanism for retrieving the analytical tools one at a time from a ease via a retrieval port, and an opening/closing mechanism for opening and closing the retrieval port. The retrieval mechanism and the opening/closing mechanism are integral with each other as a single operating body. The operating body is formed in a loop encircling the plurality of analytical tools. Applicants allege that Maisey does not disclose these features. The Examiner respectfully disagrees.

2. Maisey discloses the analytical tool cartridge of claims 1, 13 and 17 wherein each requires, among other features, A). A plurality of analytical tools stored in a storage space in a stacked state (See Figure 2a Item 16); B). A retrieval mechanism for retrieving the analytical tools one at a time from a ease via a retrieval port (See Figure 2a Item 24), and C). An opening/closing mechanism for opening and closing the retrieval port (See Figure 3a Item 14 and Item 4 which is labeled as both the barrel and the housing in Maisey; See Page 11 lines 34-37. The housing is also labeled as Item 2); D). The retrieval mechanism and the opening/closing mechanism are integral with each other as a single operating body (these three components are integral in their movement otherwise the next analytical tool will not move into position to be removed

from the cartridge) and E). The operating body is formed in a loop encircling the plurality of analytical tools (See Figure 2a Item 2 is part of the operating body which is in the form of a loop which encircles the analytical tools).

Response to Amendment

Allowable Subject Matter

3. Claims 14-16 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
4. The following is a statement of reasons for the indication of allowable subject matter: Claims 14 & 15 recite the limitation of either the analyzer, magazine, or both having first and second stopper faces attached to the respective casings for placement of the cartridge inside of the analyzer. The prior art of record does not suggest nor disclose this feature. Claim 16 is dependent on Claim 14.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1, 4-6, 9-13, 17, & 18 are rejected under 35 U.S.C. 102(b) as being anticipated by MAISEY ET AL (WO/0218940).
7. Applicants' claims are toward a device.

8. Regarding Claims 1, 4-6, 9-13, 17, & 18, MAISEY ET AL discloses the analytical tool cartridge comprising: A). A case including a storage space (See Figure 2a, Items 2 & 18) and B). A retrieval port that communicates the storage space with an external space (See Figure 4a Item 12); C). A plurality of analytical tools stored in the storage space in a stacked state (See Figure 2a Item 16); D). A retrieval mechanism for retrieving the analytical tools one at a time from the case via the retrieval port (See Figure 2a Item 24); and E). An opening/closing mechanism for opening and closing the retrieval port; wherein the retrieval mechanism and the opening/closing mechanism are, integral with each other as a single operating body, wherein the operating body is formed in a loop encircling the plurality of analytical tools ((See Figure 3a Item 14 and Item 4 which is labeled as both the barrel and the housing in Maissey; See Page 11 lines 34-37. The housing is also labeled as Item 2); and comprises an engaging projection, a closing portion and an opening portion, the engaging projection being configured to integrally move the analytical tools when the operating body is moved in a specific direction from a standby state, the closing portion being configured to close up the retrieval port in the standby state, the opening portion being configured to open up the retrieval port when the operating body is moved in the specific direction from the standby state (See Figure 3a Item 14 and Item 4).

9. Additional Disclosures Included: Claim 4: The case includes an annular wall portion that defines the storage space and has the retrieval port provided therein, the operating body disposed along an outer surface of the annular wall portion, and movable relative to the annular wall portion (See Figure 4a, the barrel and item 12 form

an annular wall which defines the storage space); Claim 5: The analytical tools each include an engaging portion with which the engaging projection engages (See Figure 2a, the analytical tools have a surface edge which engage the projections of the recess); Claim 6: The operating body includes an operating portion for applying a load to and thus moving the operating body (See Page 12 lines 15-22, user initiating turning of the feed barrel implies applying a load); Claim 9: The analytical tool cartridge the analytical tools are stored in the storage space in a state supported by a platform, and are supported in a state biased by the platform (See Figures 2a or 3a Item 24); Claim 10: The case is provided with a guiding portion for guiding the operating body when the operating body is moved (See Figure 7 Items 2 & 30); Claim 11: The storage space has therein stacked on top of the analytical tools an information outputting chip from which can be outputted information relating to properties of the analytical tools (See Page 11 lines 29-34); Claim 12: The information outputting chip outputs information relating to a calibration curve (See Page 11 lines 29-34); Claim 13: A set of an analytical tool cartridge and an analyzer, the set analytical tool cartridge comprising: A) A case including a storage space and B). A retrieval port that communicates the storage space with an external space; C). A plurality of analytical tools stored in the storage space in a stacked state; D). A retrieval mechanism for retrieving the analytical tools one at a time from the case via the retrieval port; and D). An opening/closing mechanism for operating and closing the retrieval port; wherein the retrieval mechanism and the opening/closing mechanism are integral with each other as a single operating body, and E). Wherein the operating body is formed in a loop encircling the plurality of analytical tools (See Figure

4a, the barrel and item 12 form an annular wall which defines the storage space); and comprises an engaging projection, a closing portion and an opening portion, the engaging projection being configured to integrally move the analytical tools when the operating body is moved in a .specific direction from a standby state, the closing portion being configured to close up the retrieval port in the standby state, the opening portion being configured to open up the retrieval port when the operating body is moved in the specific direction from the standby state (See rejection of Claim 1 for the analytical tool cartridge), the analyzer being constituted so as to have installed therein an analytical tool retrieved from the analytical tool cartridge, and analyze a specific component in a specimen liquid supplied onto the analytical tool (See Claim 1 of MAISEY ET AL, electrical contacts), at least one of the analytical tool cartridge and the analyzer being provided with cartridge fixing means for locating and fixing the analytical tool cartridge onto the analyzer (See Figure 31 Items 112 & 108 and frame which the cartridge fits into); Claim 17: A set of an analytical tool cartridge and an analyzer, the analytical tool cartridge comprising: A). A case including a storage space and a retrieval port that communicates the storage space with an external space; B). A plurality of analytical tools stored in the storage space in a stacked state; C). A retrieval mechanism for retrieving the analytical tools one at a time from the case via the retrieval port, and D). An opening/closing, mechanism for opening and closing the retrieval port, wherein the retrieval mechanism and the opening/closing mechanism are integral with each other as a single operating body wherein the operating body is formed in a loop encircling the plurality of analytical tools (See Figure 4a, the barrel and item 12 form an

annular wall which defines the storage space); and comprises an engaging projection, a closing portion and an opening portion, the engaging projection being configured to integrally move the analytical tools when the operating body is moved in a specific direction from a standby state, the closing portion being configured to close up the retrieval port in the standby state, the opening portion being configured to open up the retrieval port when the operating body is moved in the specific direction from the standby state, the analyzer being constituted so as to install an analytical tool retrieved from the analytical tool cartridge, and to analyze a specific component in a specimen liquid supplied onto the analytical tool, the analyzer including an inserting portion into which an end portion of the analytical tool is inserted, the analytical tool cartridge and the inserting portion being provided: with analytical tool fixing means for fixing the analytical tool in the analyzer (See Rejections for Claim 1 & 13); and Claim 18: The analytical tool fixing means comprises a projection provided on one of the analytical tool and the inserting portion, and a recess provided in the other thereof for engaging with the projection (See Figure 31, Item 112 & 110 both have either a recess or projection which cooperate to fix the cartridge into the analyzer).

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

12. Determining the scope and contents of the prior art.
13. Ascertaining the differences between the prior art and the claims at issue.
14. Resolving the level of ordinary skill in the pertinent art.
15. Considering objective evidence present in the application indicating obviousness or nonobviousness.

16. Claims 7 & 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over MAISEY ET AL.

17. Applicants' claims are toward a device.

18. Regarding Claims 7 & 8, MAISEY ET AL discloses the analytical tool cartridge according to Claim 7, except wherein the storage space has a desiccant housed therein. Maisey does however disclose the importance of keeping the analytical tools in the cartridge free from moisture, and also discloses the use of a moisture-proof seal. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the cartridge to include a dessicant inside the storage space or to use a sealing member which contains the dessicant (for Claim 8, which is fixed to the platform) in order to prevent the moisture from interacting with the analytical tools in the storage space.

Telephonic Inquiries

19. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

20. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

21. Any inquiry concerning this communication or earlier communications from the examiner should be directed to BOBBY RAMDHANIE whose telephone number is (571)270-3240. The examiner can normally be reached on Mon-Fri 8-5 (Alt Fri off).

22. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Walter Griffin can be reached on 571-272-1447. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

23. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a

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USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/B. R./

/Michael A Marcheschi/
Supervisory Patent Examiner, Art
Unit 1797